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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91186348
Party	Defendant Mobile Air, Inc.
Correspondence Address	DOUGLAS W. SPRINKLE GIFFORD KRASS ET AL. PO BOX 7021 TROY, MI 48007-7021 docket@patlaw.com
Submission	Answer and Counterclaim
Filer's Name	Julie A. Greenberg
Filer's e-mail	docket@patlaw.com
Signature	/s/Julie A. Greenberg
Date	10/17/2008
Attachments	Answer and Counterclaim.pdf (5 pages)(103029 bytes)

Registration Subject to Counterclaim

Registration No	3007106	Registration date	10/18/2005
Registrant	DRY FORCE, INC. 1819 North Rosemont Dr., Suite 103 Mesa, AZ 85205 UNITED STATES		

Goods/Services Subject to Counterclaim

Class 037. First Use: 2003/01/21 First Use In Commerce: 2003/01/21

All goods and services in the class are requested, namely: Restoration services in the field of water removal from floods; floodwater removal services

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRIAL AND APPEAL BOARD**

In the matter of trademark application Serial No. 77/399,957
For the mark MOBILE DRY FORCE
Published in the Official Gazette on August 26, 2008

DRY FORCE, INC.,

Opposer,

vs.

Opposition No. 91186348

MOBILE AIR, INC.,

Applicant.

**APPLICANT'S ANSWER TO OPPOSITION AND COUNTERCLAIM
TO CANCEL OPPOSER'S PLEADED REGISTRATION NO. 3,007,106**

Applicant, Mobile Air, Inc., a Michigan corporation having an address at 800 E. Mandoline Avenue, Madison Heights, Michigan 48071, by and through its attorneys, hereby answers the allegations set forth in the Notice of Opposition as follows:

1. Applicant is without sufficient knowledge or information as to the truth of the allegations set forth in Paragraph 1 of the Notice of Opposition, and therefore denies the same.
2. Applicant is without sufficient knowledge or information as to the truth of the allegations set forth in Paragraph 2 of the Notice of Opposition, and therefore denies the same.
3. Applicant is without sufficient knowledge or information as to the truth of the allegations set forth in Paragraph 3 of the Notice of Opposition, and therefore denies the same.
4. Applicant is without sufficient knowledge or information as to the truth of the allegations set forth in Paragraph 4 of the Notice of Opposition, and therefore denies the same.
5. Applicant admits the allegations set forth in Paragraph 5.

6. Applicant is without sufficient knowledge or information as to the truth of the allegations set forth in Paragraph 6 of the Notice of Opposition, and therefore denies the same.

7. Applicant is without sufficient knowledge or information as to the truth of the allegations set forth in Paragraph 7 of the Notice of Opposition, and therefore denies the same.

8. Applicant is without sufficient knowledge or information as to the truth of the allegations set forth in Paragraph 8 of the Notice of Opposition, and therefore denies the same.

9. Denied.

10. Denied.

11. Denied.

12. Denied.

AFFIRMATIVE DEFENSES

1. Applicant's Mark is substantially different from the design mark of Opposer's Registration, with the dominant similarity being the descriptive term "DRY" for water removal services, which descriptive term should have been voluntarily disclaimed by Opposer in obtaining its registration, resulting in a fraudulently obtained Registration.

2. Applicant's use of the descriptive term "DRY" for water removal services is fair use and not the basis of a likelihood of confusion analysis.

APPLICANT'S COUNTERCLAIM FOR CANCELLATION OF OPPOSER'S PLEADED REGISTRATION

Applicant hereby counterclaims to cancel Opposer's pleaded Registration No. 3,007,106 ("the '106 Registration") pursuant to Trademark Rule 2.106(b)(2)(i).

As grounds in support of the counterclaim, Applicant alleges as follows:

1. Opposer/Registrant's '106 Registration incorporates the wording "DRY FORCE" for restoration services in the field of water removal from floods; floodwater removal services.

2. The component word "DRY" of the registered mark is merely descriptive without secondary meaning and/or is a generic term which means removal of water or moisture, and is not properly the subject of a registration.

3. The term "DRY" is non-distinctive and is incapable of becoming distinctive of source or origin.

4. Opposer/Registrant fraudulently obtained the '106 Registration by not voluntarily disclaiming the term DRY as being merely descriptive and/or generic and incapable of belonging exclusively to Opposer/Registrant.

5. The '106 Registration should be cancelled for its failure to provide a disclaimer of the merely descriptive or generic term "DRY" or alternatively should be amended to require a disclaimer of the merely descriptive or generic term "DRY."

6. Applicant/Counterclaimant is being damaged by the subsistence of the '106 Registration for its failure to incorporate the appropriate disclaimer of the merely descriptive or generic term "DRY" as a result of Opposer/Registrant's claims based on exclusive rights purportedly and erroneously granted by the '106 Registration.

For the reasons set forth in the foregoing paragraphs, Applicant/Counterclaimant therefore files this petition to cancel, seeking:

1. That Registration No. 3,007,106 be cancelled; or alternatively,
2. That Registration No. 3,007,106 be amended to require a disclaimer of the merely descriptive/generic term "DRY."

WHEREFORE, Applicant/Counterclaimant prays that the Opposition be dismissed and that the counterclaim for cancellation be granted with Registration No. 3,007,106 being ordered canceled or amended.

Respectfully submitted,

/s/Julie A. Greenberg
Julie A. Greenberg
GIFFORD, KRASS, SPRINKLE,
ANDERSON & CITKOWSKI, P.C.
2701 Troy Center Drive, Suite 330
P.O. Box 7021
Troy, MI 48007-7021
(248) 647-6000
(248) 647-5210 – Facsimile

Attorney for Applicant

Dated: October 17, 2008

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing **APPLICANT'S ANSWER TO OPPOSITION AND COUNTERCLAIM TO CANCEL OPPOSER'S PLEADED REGISTRATION NO. 3,007,106** was sent via first class mail to the following:

Alan L. Edwards
Kunzler & McKenzie
8East Broadway, Ste. 600
Salt Lake City, UT 84111

on this 17th day of October, 2008.

/s/Julie A. Greenberg_____
Julie A. Greenberg
GIFFORD KRASS, SPRINKLE,
ANDERSON & CITKOWSKI, P.C.
2701 Troy Center Drive, Ste. 330
P.O. Box 7021
Troy, Michigan 48007-7021
(248) 647-6000
(248) 647-5210 – Facsimile

CERTIFICATE OF ELECTRONIC FILING

I hereby certify that the foregoing **APPLICANT'S ANSWER TO OPPOSITION AND COUNTERCLAIM TO CANCEL OPPOSER'S PLEADED REGISTRATION NO. 3,007,106** was electronically filed with the TTAB on this 17th day of October, 2008.

/s/Julie A. Greenberg_____
Julie A. Greenberg
GIFFORD KRASS, SPRINKLE,
ANDERSON & CITKOWSKI, P.C.
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